

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT- CRIMINAL DIVISION

People of the State of Illinois,)
Plaintiff)

vs..)

Wayne Weinke, Jr.,)
Defendant)

NO. 06CR-24436

MOTION IN LIMINE

NOW COME the People of the State of Illinois, by and through their attorney, ANITA ALVAREZ, STATE’S ATTORNEY OF COOK COUNTY, by her assistants, James P. McKay and Sherie L. DeDore, and move this Honorable Court enter an order in limine allowing certain statements to be admitted pursuant to the Illinois Rules of Evidence. In support of People’s Motion, the People state the following:

1. On July 18, 2006, at approximately 4:45 a.m., Gloria Weinke, the victim in this case, let her son, defendant Wayne Weinke, Jr. into her townhouse located at 1027 Moorings Drive, Arlington Heights, Illinois. Shortly thereafter, between approximately 5:00 to 5:30 a.m., defendant picked Gloria Weinke up and threw her over a side railing of a stairwell leading to the basement. Mrs. Weinke fell near the bottom of the stairwell and ended up on the basement landing.
2. At approximately 7:29 p.m., Fidelino Santiago, Public Safety Officer for the Moorings of Arlington Heights, went to Gloria Weinke’s townhome or villa, at 1027 Moorings Drive to do a “resident meal check” after she missed two meals and he was unable to reach Gloria Weinke by telephone. Mr. Santiago knocked on the door of Mrs. Weinke’s villa and heard a faint voice calling for help. Mr. Santiago entered the home and located Gloria Weinke on the basement landing at the bottom of a flight of stairs where she had laid for approximately 14 hours, unable to move. Mr. Santiago

asked Gloria Weinke what had happened and she told him that her son, defendant Wayne Weinke, Jr., had thrown her down to the basement. She asked him to get her help and not to leave her.

3. Arlington Heights Fire Department personnel arrived at Gloria Weinke's villa at approximately 7:35 p.m. Paramedic Mary Retel-Kline spoke to Gloria Weinke while evaluating her for treatment and transportation. Mrs. Weinke told Retel-Kline that her son, defendant Wayne Weinke, Jr., was upset about an inheritance. They argued and defendant pushed her over the railing. She told him to hit the orange emergency button so help would be sent. Defendant turned on the stairwell light, looked at her, shut the light off, and left the residence. Mrs. Weinke was left at the bottom of the stairs and was unable to move or get help. Mrs. Weinke complained of pain in her left hip and an injury towards the back of her head.
4. The first officers to arrive on the scene were Arlington Heights police officers M. Dillon and Caraway. While the paramedics were attending to Gloria Weinke who was laying at the bottom of the stairs in the basement landing, she told them that her son, defendant Wayne Weinke, Jr., came to her house at about 5:00 a.m. They had an argument and he pushed her over the railing to the basement stairs from the first floor.
5. Paramedics Paul Pretzer and Phil Palczynski transported Gloria Weinke by ambulance to Northwest Community Hospital from 1027 Moorings Drive. While they transported her, Mrs. Weinke told them how she sustained her injuries. She told them that her son, defendant Wayne Weinke, Jr., threw her over the railing to the bottom of the stairs in her house. Defendant turned the light on and saw Mrs. Weinke laying at the bottom of the basement stairs, bleeding from the head. Mrs. Weinke told defendant to press the orange emergency button and help would arrive. Defendant Wayne Weinke, Jr. then turned off the light and left the residence without pressing the button for help.
6. The People seek to introduce these statements of the victim at defendant's trial for Murder, Attempt First Degree Murder, Aggravated Domestic

Battery and Aggravated Battery to Senior Citizen. The statements are admissible pursuant to Illinois Supreme Court Rule 803. HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL (2) Excited Utterance and in part, due to (4) Statements for Purposes of Medical Diagnosis or Treatment. Furthermore, the Confrontation Clause of the U.S. Constitution does not bar the admission of the victim's statements to police because the statements were made to address an ongoing emergency.

7. Rule 803 (2) **Excited Utterance.** applies to "A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." For the excited utterance exception to the hearsay rule to apply, "there must be an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, there must be an absence of time for the declarant to fabricate the statement, and the statement must relate to the circumstances of the occurrence." People v. Sutton, 233 Ill.2d 89, 107, 908 N.E.2d 50 (2009). A victim's identification of the perpetrator and complaint of physical discomfort made two to three hours after the assault can be admitted as an excited utterance. State v. Mickelson, 848 P.2d 677 (Utah Ct. App.1992). In a sexual assault case where a 70 year old woman was victimized and identified her assailant 12 hours after the attack, the court affirmed the admission of the victim's statement as an excited utterance because it was established that the victim was "highly excited and upset when she made the declaration." People v. Noble, 178 N.W.2d 118, 119 (Mich. Ct. App.1970). [See also People v. Seymour, 183 A.D.2d 35 (S.Ct. of Ny 1992) statements by decedent made 24 to 48 hours after being attacked and tied up were admissible as spontaneous declarations.] The fact that a statement is made in response to an inquiry does not destroy spontaneity. People v. Lisle, 376 Ill. App. 3d 67, 77-78, 877 N.E. 2d 119 (2007). An excited utterance can still be made even after having spoken previously to another after the event. People v. House, 141 Ill. 2d 323, 386, 566 N.E.2d

259 (1990). Statements made to enable police assistance to meet an ongoing emergency are not testimonial, and their admission at trial does not violate the Confrontation Clause. Michigan v. Bryant, 131 S.Ct. 1143, 1150, 2011 U.S. LEXIS 1713 (2011).

8. Rule 803 (4) **Statements for Purposes of Medical Diagnosis or Treatment.** applies to “(A) Statements made for purposes of medical treatment, or medical diagnosis in contemplation of treatment, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general characteristics of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment but subject to Rule 703, not including statements made to a health care provider consulted solely for the purpose of preparing for litigation ...” This rule, fashioned after Fed. R. Evid. 803(4), allows statements made describing medical history, past or present symptoms, pain, or general character of the cause or external source leading to the injury as reasonably relevant to diagnosis or treatment.
9. Applying these principles of law to the case at bar, it is clear that Gloria Weinke’s statements at the scene are admissible at trial under the excited utterances exception to the hearsay rule. Nothing is more startling than being thrown over a railing on the first floor to a basement landing by your son. Gloria Weinke laid there unattended, alone, and unable to move until she was found by Mr. Santiago. Her statements to the first responders who arrived within minutes of Mr. Santiago’s 911 call, the paramedics and police officers, were made while she was still laying in the basement landing and receiving emergency treatment. Mrs. Weinke was still under the excitement of the event when she made the statements, and they related to the circumstances of the occurrence.
10. Gloria Weinke’s statements to the paramedics regarding the cause and source of her injuries and pain would fall under the exception regarding statements for purposes of medical diagnosis and treatment, as well as falling under the excited utterances exception. Her explanation of being

thrown over the railing as to the cause of her being unable to move and being in pain would be admissible as they would be pertinent to medical diagnosis and treatment of her injuries.

11. In the alternative, as to any portions of Gloria Weinke's statements that this Court does not believe fall under the cited hearsay exceptions, the People would seek to admit them for their effect on the listener, and not to the truth of the matter asserted. Their admittance would be necessary to demonstrate their effect on the witnesses to whom the statements were made and therefore, these statements would not be hearsay.

WHEREFORE, the People of the State of Illinois respectfully request that these prior statements of victim Gloria Weinke be admitted into evidence at trial.

Respectfully submitted,

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By: _____
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